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EDUARDO RAMIREZ

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

Case No.: CV 12-05553 LHK

EDUARDO RAMIREZ

Plaintiff,

v.

NOAH CONCRETE CORPORATION;
MCCRARY CONSTRUCTION COMPANY;
GREEN VALLEY CORPORATION dba
BARRY SWENSON BUILDER; ALBANY
UNIFIED SCHOOL DISTRICT; CITY OF
HOLLISTER; and TRAVELERS
CASUALTY & SURETY CO. OF
AMERICA

Defendants.

**PLAINTIFF'S MOTION TO MODIFY
INITIAL CASE MANAGEMENT ORDER
PURSUANT TO LOCAL RULE 16-2(d);
DECLARATION OF TOMAS E.
MARGAIN IN SUPPORT THEREOF; and
PROPOSED ORDER**

1 TO THE COURT AND ALL PARTIES WHO HAVE MADE AN APPEARANCE IN
2 THIS ACTION

3 Pursuant to Local Rule 16-2(d), as well as the Federal Rules of Civil Procedure, Plaintiff
4 hereby requests that the ADR deadlines in anticipation of the January 30, 2013 Case
5 Management Conference be modified as the parties have reached a global resolution.

6 As described in the below Declaration of Tomas E. Margain, good cause exists. Counsel
7 for Defendant NOAH CONCRETE CORPORATION and Plaintiff have reached a global
8 resolution. This settlement was reached on Monday January 7, 2013 and needs to be reduced to
9 a writing and the case dismissed by stipulation as an appearance had been made. However,
10 January 9, 2013 is the deadline for certain ADR obligations which Plaintiff would like to push to
11 January 23, 2013. In the alternative, the Court can continue the CMC and related deadlines two
12 weeks. However, as it is anticipated that the settlement will be consummated by January 23,
13 2013, this is not being requested.

14 Dated: January 8, 2013

15 By: //s// TOMAS E. MARGAIN
16 TOMAS E. MARGAIN

17 **DECLARATION OF TOMAS E. MARGAIN**

18 I, TOMAS E. MARGAIN, declare as follows:

19 1. I am an attorney duly authorized to practice before this Court and Plaintiffs'
20 attorney of record in this action. I base this declaration on my personal knowledge unless
21 otherwise indicated.

22 2. Defendant NOAH CONCRETE CORPORATION is being represented by Dawna
23 J. Chillufo. On Monday January 7, 2013, I informed Ms. Chillufo that my client had accepted
24 the monetary offer made and a payment plan. We have informed the other parties and counsel
25 and I am in the process of sending a written settlement agreement that would dispose of all
claims.

1 3. January 9, 2013 is the deadline date to meet and confer on ADR. January 23,
2 2013 is the deadline for Rule 26 obligations and to submit a Joint Case Management Statement.

3 4. I believe the parties will be able to draft and execute a settlement agreement by
4 the 23rd. However, I am submitting this motion to inform the Court of the settlement and to push
5 back the ADR deadlines.

6
7 I declare under penalties of perjury under the laws of the United States that the foregoing
8 is true and accurate. Executed on January 8, 2013 in San Jose, Santa Clara California.

9 By: _____/s// Tomas Margain_____
10 Tomas E. Margain

11 **ARGUMENT**

12 The Court has the authority to continue hearings and a party may seek a continuance
13 under Local Rule 16. Here, Plaintiff has reached a global settlement which needs to be reduced
14 to a writing. As such, a modification of the Initial CMC Order is sought to accommodate
15 reducing the settlement to a writing, having it executed, and dismissing the action.

16
17 Dated: January 8, 2013

18 By: //s// TOMAS E. MARGAIN
19 TOMAS E. MARGAIN

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

EDUARDO RAMIREZ

Plaintiff,

v.

NOAH CONCRETE CORPORATION;
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BARRY SWENSON BUILDER; ALBANY
UNIFIED SCHOOL DISTRICT; CITY OF
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CASUALTY & SURETY CO. OF
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Defendants.

Case No.: CV 12-05553 LHK

**ORDER GRANTING PLAINTIFFS'
MOTION TO CONTINUE CASE
MANAGEMENT CONFERENCE
PURSUANT TO LOCAL RULE 16-2(d)**

1 BASED ON PLAINTIFF'S MOTION TO CONTINUE, THE COURT'S FILE AND
2 GOOD CAUSE SHOWN, THE COURT ORDERS AS FOLLOWS:

3
4 The initial Case Management Conference and Rule 26 Deadlines are continued as follows:

5 **January 23, 2013**

- 6 • Last Day to Meet and Confer Regarding Initial Disclosures, ADR process election and
7 discovery plan.
8 • Last Day to file ADR Certificate signed by Parties and Counsel.
9 • Last Day to either file a stipulation to ADR Process or Notice of Need for ADR Phone
10 Conference.
11

12 **January 23, 2013**

- 13 • Last Day to File Rule 26(f) Report, complete initial disclosures and file Joint Case
14 Management Statement
15 • Last Day to File Magistrate Consent Form

16 **January 30, 2012**

- 17 • Initial Case Management Conference in Courtroom 8, 4th Floor, San Jose Courthouse at
18 2:00 p.m.
19

20 IT IS SO ORDERED

21 DATED: January 9, 2013

By:



Hon. Lucy H. Koh
United States District Court Judge